LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 21 1968
JOHN F. DAVIS, CLERK

No. 121

In the Supreme Court of the United States

OCTOBER TERM, 1968

REMEDIOS B. ABINOJA, ET AL., PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
Assistant Attorney General,

BEATRICE ROSENBERG,
ROGER A. PAULEY,
Attorneys,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 121

REMEDIOS B. ABINOJA, ET AL., PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners are natives and citizens of the Philippines who entered the United States as exchange visitors pursuant to the Mutual Educational and Cultural Exchange Act of 1961, 75 Stat. 527, 535, for further study and training in their respective medical professions. Each overstayed the authorized period of his admission and was found deportable (but granted the privilege of voluntary departure) after a hearing before a Special Inquiry Officer.

The instant controversy arises out of the fact that, during the deportation proceedings, each petitioner applied for adjustment of his (or her) status to that of a permanent resident under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255. In each case, the Special Inquiry Officer held that petitioners were not eligible for such relief, because they had not complied with Section 212(e) of the Act, 8 U.S.C. 1182(e), providing that "[n]o person" admitted under the exchange-visitor program "shall be eligible to apply for * * * permanent residence * * * until it is established that such person has resided and been physically present in the country of his nationality or last residence, * * * for an aggregate of at least two years following departure from the United States". The Officer held that the ineligibility applied even though petitioners filed official documents from the Philippine government releasing them from their exchange-visitor commitment. On June 8, 1967, the Board of Immigration Appeals sustained the decision of the Special Inquiry Officer (Pet. 17-22). On petition for review, the court of appeals affirmed (Pet. 15-16).

Petitioners contend that the sole purpose of the two-year foreign residence requirement of 8 U.S.C. 1182 (e) was to benefit the exchange visitor's home country and that therefore the requirement should not apply when that country has consented to release the exchange visitor from his return-home commitment. The identical issue was presented to this Court in a petition for certiorari (No. 970, O.T., 1966) to review the decision in *Carriaga* v. *I.N.S.*, 368 F. 2d 337 (C.A. 7), where the court of appeals held, as

here, that the explicit language of the statute on its face did not permit the construction urged by petitioners. See, also, *Tuazon* v. *I.N.S.*, 389 F. 2d 363 (C.A. 7), and *Velasco* v. *I.N.S.*, 386 F. 2d 283 (C.A. 7), certiorari pending, No. 77 Misc., this Term. Certiorari was denied in *Carriaga*, 386 U.S. 942, and the instant case warrants no different treatment.

Even if, as petitioners urge, the legislative history of the statute may and should be considered, that history confirms the consistent reading of this statute by the lower courts. The exchange-visitor program was established by Congress in 1948 with the passage of the United States Information and Educational Exchange Act, 62 Stat. 6, in order to "promote a better understanding of the United States in other countries" by means of, *inter alia*, "the interchange of persons, knowledge, and skills". The program did not, however, function as contemplated. Many exchange visitors evaded their obligation to use abroad the knowledge and skills acquired here, by leaving the United States and securing readmittance as immigrants from neighboring countries such as Canada. See H. Rep. No. 2110 and S. Rep. No. 1608, 84th Cong., 2d Sess. The President and the Congress concluded that these efforts tended to undermine the basic objectives of the program.[1] As a result, amendments

[1] Both the House and Senate Reports cited above refer to the language of President Eisenhower in vetoing a private bill to grant an exchange visitor permanent residence:

> All of the exchange programs are founded upon good faith * * *. On the one hand exchange aliens must return to the country from which they come. On the other hand,

were adopted in 1956 to make clear that the "exchange program is not an immigration program and should not be used to circumvent the operation of the immigration laws." S. Rep. No. 1608, 84th Cong., 2d Sess., p. 3. The principal amendment adopted was the provision, at issue here, establishing the two-year foreign residence requirement for exchange visitors.[2] The Senate Report stated that the purpose of the restriction was to promote a policy whereby "those individuals who are brought to the United States will return either to their own *or another cooperating country* to impart to their friends and the society in which they live impressions of the United States and its culture." S. Rep. No. 1608, 84th Cong., 2d Sess., p. 2 (emphasis supplied); see, also, remarks of Rep. Walter, 105 Cong. Rec. 1952-1953; 1 Gordon & Rosenfield, *Immigration Law and Procedure* (1967) § 6.8g.

---

the United States must not permit either immediate reentry or other evasion of the return rule. Otherwise the countries from which our exchange visitors come will realize little or no benefit from the training or experience received in the United States, and we shall fail to promote good will toward and better understanding of our way of life.

[2] A provision for waiver of that requirement by the Attorney General in the public interest, upon the request of an interested government agency and the recommendation of the Secretary of State, was also enacted. Its purpose was to permit the United States to retain certain exceptionally talented exchange visitors needed in programs of vital governmental importance. Needless to say, the waiver provision was meant to be exercised very sparingly. See Memorandum for the Respondent (I.N.S.) in Nos. 77 Misc. and 78 Misc., this Term, presently pending on petitions for writs of certiorari.

It is clear, therefore, that while one purpose of the exchange-visitor program was to aid underdeveloped countries, an equally important objective was to benefit the United States by having exchange visitors return to their own or some other underdeveloped nation where they might share impressions of this country and thus foster mutual understanding and good will. The willingness of an exchange visitor's home country to release him from his return-home commitment plainly does not satisfy the latter purpose and thus was not intended by Congress to permit avoidance of the explicit two-year foreign residence requirement. Furthermore, even a release by the alien's own government can scarcely be said to satisfy the express congressional concern that this program not be used as a supplement or alternative to the immigration laws. As petitioners stress at some length (Pet. 5-9), Congress has been aware of the shortage of medical personnel in this country and of the possibility of tapping the supply of professionals from other countries. In this light, the judgment of Congress that such badly needed personnel should not be drawn from the ranks of aliens admitted under the exchange visitor program, at least until they have lived abroad for two years, represents the type of policy determination which should be respected as peculiarly a legislative matter.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROGER A. PAULEY,
Attorneys.

JUNE 1968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 310486 838